

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

K.S. by her guardian ad litem, Kenneth
L. Isserlis, and DOROTHY SPIOTTA
and PAUL SPIOTTA,

Plaintiffs,

v.

AMBASSADOR PROGRAMS, INC.;
AMBASSADOR GROUP INC.; and
PEOPLE TO PEOPLE
INTERNATIONAL,

Defendants.

NO. CV-08-243-RMP

ORDER DENYING
DEFENDANTS' MOTION
FOR PROTECTIVE ORDER

I. Introduction

Before the Court is Defendants' Motion for Protective Order (Ct. Rec. 223). The Court has considered Defendants' Motion, Defendant's Memorandum in Support (Ct. Rec. 224), Supporting Declaration and Exhibits (Ct. Rec. 225), Plaintiffs' Response Memorandum (Ct. Rec. 251) and Supporting Declaration and Exhibits (Ct. Rec. 252), and Defendants' Reply Memorandum (Ct. Rec. 275) and Supporting Declaration (Ct. Rec. 276), and the remaining pleadings and file in this case.

II. Background

The factual background of this case is fully articulated in previous orders. In the pending motion for a protective order, Defendants object to Plaintiffs' Notice of Deposition of Rule 30(b)(6) Designee of Ambassador Programs, Inc.

1 and Ambassadors Group, Inc. Re: Leaders (Ct. Rec. 225-1). Plaintiffs are
2 pursuing claims of both negligence and fraud, as well as Consumer Protection Act
3 and breach of contract claims (Ct. Rec. 75). Plaintiffs base their claims in part on
4 allegations that Defendants have failed to supervise the employees or “leaders”
5 who are responsible for protecting and supervising the children’s health and safety
6 on trips, such as the one in which Plaintiff K.S. participated (Ct. Rec. 75). In this
7 motion, Defendants object to Plaintiffs’ deposition notice to question Ambassador
8 employees about whether Ambassador previously has disciplined Ambassador
9 leaders and if so, what the nature of the discipline was. Plaintiffs argue that such
10 discovery is directly relevant to whether Ambassador appropriately supervised and
11 disciplined its leaders (Ct. Rec. 251 at 3). Plaintiffs contend that this discovery is
12 evidence of past and future conduct and practices and, as such, relates to possible
13 consumer protection claims and fraud claims to prove that Ambassadors’ claims in
14 its promotional materials are inaccurate (Ct. Rec. 251 at 3-5). In addition,
15 Plaintiffs contend, and Defendants concede, that this information may be relevant
16 for determining damages, including assessing any comparative fault.

17 18 **III. Applicable Law**

19 *A. Fed. R. Civ. P. 26(b)*

20 The Federal Rules of Civil Procedure permit liberal discovery of relevant
21 information. *See* Fed. R. Civ. P. 26(b)(1); *Seattle Times, Co. v. Rhinehart*, 467
22 U.S. 20, 34 (1984). The discovery request need only “appear[] reasonably
23 calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P.
24 26(b)(1). Rule 26(b)(1) is to be construed broadly, and encompasses any matter
25 that bears on, or that reasonably could lead to other matters that would bear on,
26 any issue that is or may be in the case. *See, e.g., Oppenheimer Fund, Inc. v.*

1 *Sanders*, 437 U.S. 340, 351, 351 n. 12 (1978).

2 However, the court should limit the scope of discovery under certain
3 circumstances:

4 On motion or on its own, the court must limit the frequency or
5 extent of discovery otherwise allowed, by these rules or by local rule if
it determines that;

6 (i) the discovery sought is unreasonably cumulative or duplicative, or
7 can be obtained from some other source that is more convenient, less
burdensome, or less expensive;

8 (ii) the party seeking discovery has had ample opportunity to obtain the
9 information by discovery in the action; or

10 (iii) the burden or expense of the proposed discovery outweighs its
likely benefit, considering the needs of the case, the amount in
11 controversy, the parties' resources, the importance of the issues at stake
in the action, and the importance of the discovery in resolving the
12 issues.

13 Fed.R.Civ.P. 26(b)(2)(C).

14 *B. Fed. R. Civ. P. 30(b)(6) Depositions*

15 Pursuant to Fed. R. Civ. P. 30(b)(6), a party may serve notice on an
16 organization that describes “with reasonable particularity the matters on which
17 examination is requested.” The noticed organization must then “designate one or
18 more officers, directors, or managing agents, or other persons who consent to
19 testify on its behalf.” Fed. R. Civ. P. 30(b)(6). “The persons so designated shall
20 testify as to the matters known or reasonably available to the organization.” Fed.
21 R. Civ. P. 30(b)(6).

22 Although there is conflicting case law from other circuits on the proper
23 scope of a Rule 30(b)(6) deposition in light of its “reasonable particularity”
24 requirement, districts in the Ninth Circuit have concluded that “[o]nce the witness
25 satisfies the minimum standard [for serving as a designated witness], the scope of
26 the deposition is determined solely by relevance under Rule 26, that is, that the
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evidence sought may lead to the discovery of admissible evidence.” *Detoy v. City and County of San Francisco*, 196 F.R.D. 362, 367 (N.D.Ca.2000); *see also U.S. E.E.O.V. v. Caesars Entertainment, Inc.*, 237 F.R.D. 428, 432 (D. Nev.2006).

C. Protective Orders

Rule 26(c) provides the basis for protective orders and states in relevant part:

Upon motion by a party or by a person from whom discovery is sought . . . and **for good cause** shown, the court . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery.

Fed. R. Civ. P. 26(c)(1), 26(c)(1)(D).

IV. Discussion

Plaintiffs argue that their negligence, fraud, violation of Consumer Protection Act laws, and breach of contract claims require expanded discovery beyond Defendants’ actions involving the 2006 trip to Australia in which Plaintiff K.S. participated. In particular, Plaintiffs contend that Defendants fail to properly instruct leaders of trips who are responsible for supervision of the program’s young clients during the clients’ travel to foreign countries. Plaintiffs are not limiting their claims or the basis of their claims to one specific trip, but rather are arguing that Defendants systemically fail to adequately supervise minor children traveling abroad and systemically fail to discipline leaders when they fail to provide adequate supervision. To support their claims and the theory of their case, Plaintiffs need to conduct discovery on a wider basis than just the 2006 Australia trip. *See, e.g., Lambert v. Downtown Garage, Inc.*, 262 Va. 707, 712,

1 553 S.E.2d 714 (2001) (Virginia law requires a showing of a false statement of an
2 existing fact to support fraud and Consumer Protection Act claims); *McCary v.*
3 *Commonwealth*, 42 Va.App. 119, 129, 590 S.E.2d 110, 115 (2003) (fraudulent
4 intent may be established from a pattern of conduct under Virginia law); *Mason v.*
5 *Mortgage America, Inc.*, 114 Wn.2d 842, 853, 792 P.2d 142 (1990) (under
6 Washington law, Consumer Protection Act claim requires showing a “pattern or
7 generalized course of conduct” and “a real and substantial potential for repetition
8 of defendant’s conduct”).

9 Defendants’ main objection is that responding to Plaintiffs’ requests or
10 preparing Ambassador employees for deposition regarding past disciplinary
11 actions against leaders or occasions when leaders were not invited to return for
12 future trips is overly burdensome, because their computer system does not provide
13 a method of searching the files for all past leaders at the same time.

14 However, under Federal Rule of Civil Procedure 26, the Plaintiffs have the
15 right to request discovery to prove their case, even to gain access to evidence that,
16 although itself inadmissible, “is reasonably calculated to lead to the discovery of
17 admissible evidence.” Fed. R. Civ. P. 26(b)(1). The Defendants, as the party
18 resisting discovery, bear the burden of clarifying, explaining, and supporting its
19 objections. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir.1975). In
20 order to demonstrate good cause, a party seeking a protective order “bears the
21 burden of showing specific prejudice or harm will result if no protective order is
22 granted.” *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206,
23 1210-11 (9th Cir. 2002).

24 As the parties admit, and as the exhibits submitted in support of the parties’
25 positions in this motion support, Plaintiffs repeatedly requested discovery relating
26 to Defendants’ training and disciplinary actions of leaders in a variety of
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1 discovery requests. Each time, Defendants refused to respond and filed
2 objections instead. In this motion, Defendants sought a protective order for the
3 depositions on the day that the depositions were scheduled to take place, which
4 was also the last day of the discovery period before discovery cut-off.

5 The Court weighs the inconvenience for the Defendants of preparing its
6 employees to respond in the requested depositions with the Plaintiffs' interest in
7 disclosure and Plaintiffs' repeated, and varied, attempts to obtain the discovery.
8 Fed. R. Civ. P. 26(b)(2)(C). The Court finds that none of the Rule 26(b)(2) factors
9 support the need of a protective order in this case. Given that the information
10 sought is highly relevant to the Plaintiffs' case and only available through the
11 Defendants and the Defendants have not demonstrated that there is any other way
12 for Plaintiffs to obtain this discovery or that preparing their employees for
13 depositions is unduly burdensome, the balance of factors weighs in favor of the
14 Plaintiffs's access to the requested discovery.

15 **V. Award of Expenses**

16 Plaintiffs request sanctions under Fed. R. Civ. P. 26(c)(3). Rule 26(c)(3)
17 provides that another of the federal civil rules, Fed. R. Civ. P. 37(a)(5), applies to
18 awards of expenses in relation to bringing or defending against a motion for
19 protective order. Fed. R. Civ. P. 37(a)(5)(A) requires the Court to award the
20 Plaintiffs their reasonable expenses, including attorney's fees, incurred in
21 defending against the Defendants' protective order motion, unless the following
22 circumstances are present:

- 23 (i) the movant filed the motion before attempting in good faith to obtain the
- 24 disclosure of discovery without court action;
- 25 (ii) the opposing party's nondisclosure, response, or objection was
- 26 substantially justified; or

1 (iii) other circumstances make an award of expenses unjust.
2 Fed. R. Civ. P. 37(a)(5)(C).

3 Finding none of these exceptions present, the Court awards reasonable
4 expenses and attorney's fees pursuant to Fed. R. Civ. P. 26(c)(3) and Fed. R. Civ.
5 P. 37(a)(5). The Court further finds that Fed. R. Civ. P. 30(d)(2) authorizes the
6 Court to impose a sanction of reasonable expenses and attorney's fees "on a
7 person who impedes, delays, or frustrates the fair examination of the deponent."
8 Defendants' filing the present motion for a protective order on the very day that
9 the depositions were scheduled to occur impeded, delayed, and frustrated the
10 Plaintiffs' ability to depose the witnesses. Therefore, the Court finds that an
11 award of Plaintiffs' reasonable expenses and attorney's fees is appropriate.

12 Accordingly, **IT IS HEREBY ORDERED:**

- 13 1. Defendants' Motion for Protective Order (**Ct. Rec. 223**) is **DENIED**;
- 14 2. Defendants will comply with Plaintiffs' Second Amended Notice of
15 Deposition of Rule 30(b)(6) Designee of Ambassador Program, Inc.
16 and Ambassadors Group, Inc. Re: Leaders;
- 17 3. The discovery cut-off deadline is extended solely for purposes of
18 Plaintiffs to depose Defendants' employees pursuant to this Order;
- 19 4. The parties are directed to contact the Court during the depositions if
20 any discovery disputes arise, and the Court will make itself available
21 to resolve those disputes immediately;
- 22 5. Costs are awarded to Plaintiffs for defending this action pursuant to
23 Fed. R. Civ. P. 26(c)(3) and Fed. R. Civ. P. 30(d)(2). Within ten
24 days of the date of this order, Plaintiffs are to submit documentation
25 related to the costs. Defendants may respond to Plaintiffs'
26 submissions five days after Plaintiffs file the documentation with the

1 Court.

2 **IT IS SO ORDERED.** The District Court Executive is directed to enter
3 this Order and forward copies to counsel.

4 **DATED** this 14th day of April, 2010.



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6 s/ Rosanna Malouf Peterson
7 ROSANNA MALOUF PETERSON
8 United States District Court Judge
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